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08-0042

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

1. PARTIES

A. Address

THIS AGREEMENT FOR COMPUTER SOFTWARE LICENSES, MAINTENANCE AND TECHNICAL SUPPORT SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and **GROUP 1 SOFTWARE, INC.** ("Contractor"), a Delaware corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

<u>City</u>	<u>Contractor</u>
City Purchasing Agent City of Houston P.O. Box 1562 Houston, Texas 77251	Group 1 Software, Inc. 4200 Parliament Place Lanham, MD 20706 Attn: Contract Administration

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A Software License Agreement for Licensed Software
- A-2 Training Details and Pricing
- B. Equal Employment Opportunity
- C. Drug Policy Compliance Agreement
- D. Drug Policy Compliance Declaration
- E. Certification of No Safety Impact Positions

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

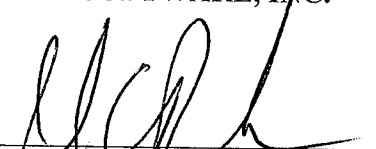
D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.


GROUP 1 SOFTWARE, INC.

By: 
Name: JOAN C. KENEHAN
Title: VICE PRESIDENT, OPERATIONS

ATTEST/SEAL (if a corporation)
WITNESS (if not a corporation)

By: _____
Name: _____
Title: _____

APPROVED:

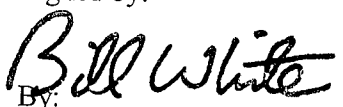
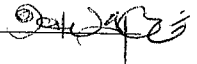

City Purchasing Agent

APPROVED AS TO FORM:



Assistant City Attorney
L.D. No. 0630700089002

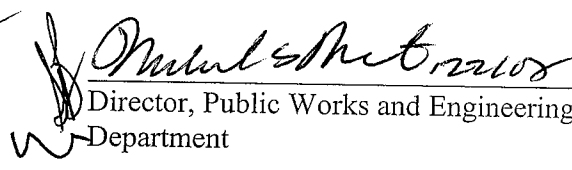
CITY OF HOUSTON, TEXAS

Signed by:

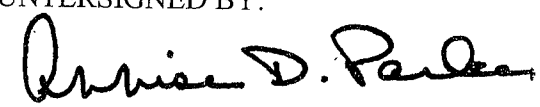
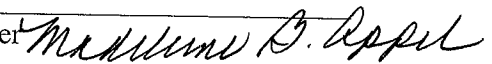
By: 
Mayor 

ATTEST/SEAL:


City Secretary


Director, Public Works and Engineering
Department

COUNTERSIGNED BY:


City Controller 

DATE COUNTERSIGNED:

1-25-08

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Acceptance" means the process set out in Section IV, F of this Agreement to test the software being licensed under this Agreement by installing and using the licensed software on the City's computers under the terms of the license attached to this Agreement as Exhibit "A."

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" means the Purchasing Agent for the City of Houston, or the person he or she designates.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Director" means the Director of the Department of Public Works and Engineering, or the person he or she designates.

"Documents" mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

"Documentation" means the manual provided by Contractor detailing the Licensed Software's operations.

"Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation".

"Licensed Software" means Contractor's software programs listed in Section III, A below which City has licensed from Contractor under this Agreement, previous agreements identified in Section III, A below and in accordance with the license agreement attached to this Agreement as Exhibit "A."

"Notice to Proceed" means a written communication from the Director to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Reasonable Travel Expenses" mean the ordinary and reasonable cost of travel by Contractor's training instructors from their city of location to Houston and back, up to a maximum of \$4,500.00. Reasonable Travel Expenses are expenses that do not exceed the amount established under the City's current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost of lodging and meals if such travel is reasonably necessary to accomplish a task directly related to the project, and if reservations are made as far in advance is feasible.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement and the terms of the Exhibit A, attached hereto and incorporated herein by reference. Contractor shall provide the following software services:

1. grant City a non-exclusive, non-transferable license to one (1) of each of the

following Licensed Software subject to the terms set forth in Exhibit A:

Licensed Software	Term of License	Number of Copies	Number of Users	Type of Operating System
Merge/Purge Plus	Perpetual	1	N/A	Windows
List Conversion Plus	Perpetual	1	N/A	Windows
Message 1 Administrator	Perpetual	1	1	Windows
Message 1 User	Perpetual	3	N/A	Windows
DOC 1 Generate (with Postscript Drivers)	Perpetual	1	N/A	Windows
DOC 1 Designer	Perpetual	1		Windows
Mail Stream Plus	Perpetual	1	N/A	MVS
CODE-1 PLUS	Perpetual	1	N/A	MVS

- a) DOC 1 Generate (with Postscript Drivers) and DOC 1 Designer (collectively, "DOC1") were previously licensed by Xerox Corporation for use on behalf of the City. Contractor will not deliver DOC1 to the City;
- b) Mail Stream Plus and CODE 1 Plus were each previously licensed by the City under that certain Perpetual License Agreement for Computer Software Products No. 99-C33 (the "1998 Agreement"). Contractor will not deliver mail Stream Plus and CODE 1 Plus to the City. Upon execution of this Agreement, the 1998 Agreement shall terminate and CODE 1 Plus and Mail Stream Plus shall be governed by the terms of this Agreement;
- c) Except as otherwise set out herein, DOC 1 CODE 1 Plus, Mail Stream Plus, Merge/Purge Plus, List conversion Plus, Message 1 Administrator and Message 1 User shall collectively be referred to as the "Licensed Software".

2. Provide maintenance and subscription services for DOC 1 and one copy of each of CODE 1 Plus and Mail Stream Plus through the term set out in Section III, R below, and thereafter as provided herein.
3. Designate a web-site, www.support@gl.com and a telephone line, 1-800-367-6950 (any change of above designated web-site address and telephone number shall be made with 30 days written notice to the Director) for City use;
4. Staff both the above web-site and telephone line with qualified and experienced technical personnel capable of solving technical problems about the Licensed Software referred to Contractor via the web-site or telephone number listed above by City employees or agents.
5. Train City employees or end-users designated by the Director to undergo such training at Contractor's facility in the use and configuration of the Licensed Software.

B. Coordinate Performance

_____ Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

C. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS. Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes

under the MWBE subcontract.

D. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

E. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR")

ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

(2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

(3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

F. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY LICENSED SOFTWARE PROVIDED BY CONTRACTOR DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET TO THE EXTENT THAT

THE LICENSED SOFTWARE IS USED IN ACCORDANCE WITH THE APPLICABLE DOCUMENTATION. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM WHICH IMPOSES ANY FINANCIAL LIABILITY ON THE CITY WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE LICENSED SOFTWARE, AND, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT LICENSED SOFTWARE. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, CONTRACTOR MAY TERMINATE THE LICENSE TO THE SOFTWARE AND THE CITY SHALL RETURN THE LICENSED SOFTWARE AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE. CONTRACTOR SHALL HAVE NO OBLIGATION TO INDEMNIFY THE CITY UNDER THIS SECTION BASED UPON THE CITY'S (I) UNAUTHORIZED MODIFICATION OF THE SOFTWARE; (II) COMBINATION, OPERATION OR USE OF THE SOFTWARE WITH NON-CONTRACTOR LICENSED SOFTWARE PRODUCTS IF SUCH CLAIM OF INFRINGEMENT OR MISAPPROPRIATION WOULD HAVE BEEN AVOIDED HAD SUCH COMBINATION, OPERATION OR USE NOT OCCURRED; (III) USE OF OTHER THAN THE MOST CURRENT RELEASE OF THE LICENSED SOFTWARE IF SUCH CLAIM OF INFRINGEMENT OR MISAPPROPRIATION COULD HAVE BEEN AVOIDED BY THE CITY'S USE OF SUCH CURRENT RELEASE OF THE

LICENSED SOFTWARE, PROVIDED CONTRACTOR DELIVERED SUCH SUPERCEDING VERSION TO THE CITY AND NOTIFIED THE CITY OF THE NEED TO USE SUCH VERSION.

G. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY

_____ CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) THAT PROVIDE CONSULTING SERVICES UNDER THIS AGREEMENT TO RELEASE AND INDEMNIFY THE CONTRACTOR TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

H. INDEMNIFICATION - PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

I. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance

coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Professional Liability
 - \$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance
 - \$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance of consulting services under this Agreement and begin procedures to terminate for default,

or
- (2) purchase the required insurance with City funds and deduct the cost of the

premiums from amounts due to Contractor under this Agreement.

J. Warranties

- (1) Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

Software Warranty

- (2) Contractor warrants that the Licensed Software programs it provides under the terms of this Agreement will be free of any defects in workmanship or materials for the period starting on the date of Confirmation of receipt of the Licensed Software and ending 90 days thereafter.

K. Confidentiality - Protection of City's Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents that is either identified as confidential or is information that Contractor knew or reasonably should have known was confidential (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section or terms substantially equivalent thereto. Group 1 may, subject to the terms of this Agreement, disclose Information to an affiliate or a third party consultant or contractor assisting Group 1 with the performance of Maintenance Services or any of Group 1's other obligations under this Agreement to the extent such affiliate, third party consultant or contractor has agreed in writing to confidentiality

provisions at least as protective of confidential information as the provisions set out herein. Information shall not include any information that Contractor can establish: (i) is or substantially becomes publicly available through no act or omission of Contractor; (ii) was in Contractor's lawful possession prior to disclosure of such information; (iii) is subsequently disclosed to Contractor by a third party who is not in breach of an obligation of confidentiality; or (iv) is independently developed by Contractor without the use or benefit of the Confidential Information. Confidential Information may be disclosed under a court order, or a valid subpoena, to the extent counsel for Contractor determines in its reasonable discretion that the disclosure of such Confidential Information is reasonably required and promptly notifies the City in writing of such determination and provides the City an opportunity to seek an appropriate protective order prior to disclosing such Information.

L. Use of Work Products - City may use all documents

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement consistent with the terms of this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

M. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

N. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

O. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "B".

P. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "C," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on

completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "D." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

Q. Pay or Play Policy

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

IV. DUTIES OF THE CITY

A. Payment Terms

1. Upon Acceptance of the Merge/Purge Plus Client Server software as set out in Section IV, E below, City shall pay and Contractor shall accept a one-time license fee of \$19,000.00 for the total cost of a perpetual license for the use of the software.
2. Upon Acceptance of the Merge/Purge Plus Client Server software as set out in Section IV, E below, City shall pay and Contractor shall accept \$3,300.00 for one year (the

first year) of maintenance and technical support services for the Merge/Purge Plus Client Server software as set out in Section III, A (4 & 5) effective the day following Acceptance of the software by City.

3. Subject to the allocation of funds as set out in Section IV, F below, City shall pay and Contractor shall accept \$3,432.00 for the second year of maintenance and technical services for the Merge/Purge Plus Client Server software, effective the day following the completion of the first year of support.
4. Subject to the allocation of funds as set out in Section IV, F below, City shall pay and Contractor shall accept \$3,569.00 for the third year of maintenance and technical services for the Merge/Purge Plus Client Server software, effective the day following the completion of the second year of support.
5. Upon Acceptance of the List Conversion Plus software as set out in Section IV, E below, City shall pay and Contractor shall accept a one-time license fee of \$14,250.00 for the total cost of a perpetual license for the use of the software.
6. Upon Acceptance of the List Conversion Plus software as set out in Section IV, E below, City shall pay and Contractor shall accept \$2,475.00 for one year (the first year) of maintenance and technical support services for the List Conversion Plus software as set out in Section III, A (4&5) effective the day following Acceptance of the software by the City.
7. Subject to the allocation of funds as set out in Section IV, F below, City shall pay and Contractor shall accept \$2,574.00 for the second year of maintenance and technical support services for the List Conversion Plus software, effective the day following the

completion of the first year of support.

8. Subject to the allocation of funds as set out in Section IV, F below, City shall pay and Contractor shall accept \$2,677.00 for the third year of maintenance and technical support services for the List Conversion Plus software, effective the day following the completion of the second year of support.
9. Upon Acceptance of the Message 1 Administrator software as set out in Section IV, E below, City shall pay and Contractor shall accept a one-time license fee of \$45,000.00 for the total cost of a perpetual license for the use of the software.
10. Upon Acceptance of the Message 1 User software as set out in Section IV, E below, City shall pay and Contractor shall accept a one-time license fee of \$13,500.00 for the total cost of a perpetual license for the use of the software.
11. Upon Acceptance of the Message 1 Administrator and Message 1 User software as set out in Section IV, E below, City shall pay and Contractor shall accept \$8,910.00 for one year (the first year) of maintenance and technical support services for the Message 1 Administrator and Message 1 User software as set out in Section III, A (4&5) effective the day following Acceptance of the software by City.
12. Subject to the allocation of funds as set out in Section IV, F below, City shall pay and Contractor shall accept \$9,266.00 for the second year of maintenance and technical services for the Message 1 Administrator and Message 1 User software, effective the day following the first year of support.
13. Subject to the allocation of funds as set out in Section IV, F below, City shall pay and Contractor shall accept \$9,637.00 for the third year of maintenance and technical

services for the Message 1 Administrator and Message 1 User software, effective the day following the second year of support.

14. Upon countersignature of this Agreement by the City Controller, City shall pay and Contractor shall accept total annual maintenance and technical support services fees of \$35,682.00 for one year of maintenance and technical support services for DOC1 Generate, DOC1 Designer, Code-1 Plus, US Postal Database and Mailstream Plus software programs for the one year period (the "first year") from the Countersignature Date.
15. Subject to the allocation of funds as set out in Section IV, F below, City shall pay and Contractor shall accept total annual maintenance and technical support services fees of \$37,682.00 for one year of maintenance and technical support services for DOC1 Generate, DOC1 Designer, Code-1 Plus, US Postal Database and Mailstream Plus software programs for the one year period effective the day after the first year of maintenance and technical support services set out in Paragraph (9) expires.
16. Subject to the allocation of funds as set out in Section IV, F below, City shall pay and Contractor shall accept total annual maintenance and technical support services fees of \$38,595.00 for one year of maintenance and technical support services for DOC1 Generate, DOC1 Designer, Code-1 Plus, US Postal Database and Mailstream Plus software programs for the one year period effective the day after the first year of maintenance and technical support services set out in Paragraph (10) expires. —
City and Contractor agree that the annual maintenance and technical support services fees are being paid in advance each year to lock in the rates for the one-year

maintenance period listed for each Licensed Software program. The City may audit all payments made to Contractor at a later date. Contractor shall refund any overpayments uncovered in the audit. If this Agreement is terminated before the end of a period for which payment equal to the percentage of the prepaid period remaining after termination. This refund must be made within 30 days of termination of this Agreement.

17. Upon training City employee end-users to use the Licensed Software as detailed in Exhibit "A-2," City shall pay Contractor \$24,000.00 which includes reimbursable Reasonable Travel Expenses of \$4,500.00.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

C. Method of Payment

The City shall pay on the basis of invoices submitted by Contractor and approved by the Director, showing the services performed and the attendant fee. The City shall pay Contractor within 30 days of the receipt and approval of the invoices.

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute

and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. Acceptance of Software

The Licensed software shall be accepted when Director confirms receipt.

F. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$170, 617.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$ _____, upon the request of the Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$ _____.

SIGNED:

(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the Director)
Director

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for three years unless sooner terminated under this Agreement (the "Initial Term").

B. Renewals

If the Director, at his or her sole discretion, advises the City Purchasing Agent to make a written request for renewal to Contractor at least 30 days before the expiration of the then-current

term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement is renewed for two successive one-year terms upon the same terms and conditions.

C. Termination for Convenience by City

The City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. Contractor shall refund prorata advance technical support fees paid for the period remaining after the termination of this Agreement in the manner set out in Section IV, A.

TERMINATION OF THIS AGREEMENT IS CONTRACTOR'S ONLY REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

D. Termination for Cause

If Contractor defaults under this Agreement, the City Purchasing Agent may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;

- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If default occurs, the City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However,

neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City Purchasing Agent will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the City Purchasing Agent is final.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the

City.

5. If the Force Majeure continues for more than 10 days from the date performance is affected, the City Purchasing Agent may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

_____ Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The City Purchasing Agent and Director are only authorized to perform the functions specifically delegated to them in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the City Purchasing Agent, the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this

Agreement or establish a standard of performance other than that required by this Agreement and by law. The City Purchasing Agent and Director are not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Publicity

Contractor shall make no announcement or release of information concerning this

Agreement unless the release has been submitted to and approved, in writing, by the Director.

O. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

P. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Q. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent. Notwithstanding anything to the contrary set out herein, Contractor may assign its rights and obligations hereunder to a successor in interest as a result of a merger or an entity that owns, is under common control, or is controlled by a third party that acquires all or substantially all of its assets or a majority or controlling interest of its

outstanding voting securities.

R. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

S. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

EXHIBIT "A"

SOFTWARE LICENSE AGREEMENT FOR LICENSED SOFTWARE

THIS SOFTWARE LICENSE AGREEMENT IS ENTERED INTO BETWEEN THE CITY OF HOUSTON ("CITY") AND GROUP 1 SOFTWARE, INC. ("CONTRACTOR") FOR THE USE OF CONTRACTOR'S LICENSED SOFTWARE. THE CITY ACCEPTS THE TERMS AND CONDITIONS LISTED BELOW AND CITY'S USE OF THE LICENSED SOFTWARE SHALL BE GOVERNED BY THIS LICENSE AGREEMENT WHICH IS INCORPORATED INTO AND MADE A PART OF CITY'S CONTRACT WITH CONTRACTOR.

1. DEFINITIONS

"Licensed Software" shall mean the software programs listed in Article III of City's Contract with Contractor, in object code form only, created by Contractor.

"Installation Site" shall mean the location identified in this Agreement where the Licensed Software are authorized to be installed.

"Remote Access" shall mean access to an use of the Licensed Software, including, without limitation, the submission of data or processing instructions, directly or indirectly via a server, Internet or otherwise, to the Computer, from locations other than the Installation Site.

“Service Provider” shall mean the use of the Licensed Software to provide services, including, without limitation, to verify address information and/or provide postal-related services; develop, design, archive, process and/or print bills, statements or other business documents; and/or perform other data processing services, for entities other than the City; and

“Users” shall mean designated employees and end-users of the City authorized to use the Licensed Software in accordance with this Agreement regardless of whether the individual is actively using the Licensed Software at any given time.

2. SCOPE OF LICENSE

a. The Licensed Software shall be installed and used only on the computer identified in this Agreement containing up to the specified number of MIPS or processors and utilizing the operating system set out herein (the “Computer”). In addition, the Licensed Software shall, only be used: (i) by up to the specified number of Users; (ii) at the Installation Site; and (iii) by and for the benefit of the City. The City shall not have Remote Access nor shall the City use the Licensed Software as a “Service Provider”(providing services such as verifying addresses or postal-related services). The CODE-1 Plus Software licensed hereunder shall only be used to process records with Texas addresses.

b. The City may, as applicable, add additional processors or MIPS to the Computer, transfer the Licensed Software to a different computer, add Users or expand the rights of the Licensed Software granted herein, only upon Contractor’s prior written consent, which consent may be condition upon payment by the City of any applicable fees and subject to the allocation of funds as set out in Section IV, F. The Installation Site may be changed by the City to another location in the United States upon prior written notice to Contractor.

c. The City shall not copy the Licensed Software, except to make one disaster recovery

copy of the Licensed Software. The City shall reproduce all copyright, trademark, trade secret and other proprietary notices in such disaster recovery copy. The disaster recovery copy of the Licensed Software may only be used if the Computer becomes inoperative and only on a back-up computer with equal to or a fewer number of processors or MIPS as the Computer. In no event may the City use the disaster recovery copy of the Licensed Software for production or testing concurrently with the use of the Licensed Software in production or testing.

d. The City shall not reverse engineer or decompile the Licensed Software or any portion thereof, or modify, alter or change the Licensed Software.

e. DOC1. Message 1 Administrator and Message 1 User shall used or accessed only by the City's Department of Public works and Engineering ("DPWE"). DPWE may use such Licensed Software on behalf of other departments, agencies, or divisions of the City; provided, however, such departments, agencies, or divisions may not directly access or use such Licensed Software.

f. The Licensed Software shall be installed and used on the following Computer, at the following Installation Site and subject to the restrictions set out herein:

i) **Installation Site:**
4200 Leeland Street
Houston, Texas 77023-3016

ii) **Computer**

Licensed Software	Type of Computer	Number of MIPS	Number of Processors
DOC 1 Generate; DOC 1 Designer	PC PC	N/A N/A	Up to 6 Up to 6
CODE - 1 Plus; Mail Stream Plus	IBM Mainframe IBM Mainframe	100 MIPS 100 MIPS	N/A N/A

Merge/Purge Plus	PC	N/A	Up to 2
List Conversion	PC	N/A	Up to 2
Message 1 Administrator	Windows Server	N/A	Up to 2
Message 1 User	Windows Server	N/A	Up to 2

3. MAINTENANCE; RENEWAL OF TERM LICENSE

- (a) Subject to the payment of the applicable fees, Contractor shall provide the City with maintenance and subscription services for the Licensed Software from the Effective Date until the expiration date set out below:

<u>Software</u>	<u>Maintenance Expiration Date</u>
CODE - 1 Plus	December 31, 2008
Mail Stream Plus	December 31, 2008
DOC 1 Generate	December 31, 2008
DOC 1 Designer	December 31, 2008
List Conversion	December 31, 2008
Mail/Purge Plus	December 31, 2008
Message 1 Administrator	December 31, 2008
Message 1 User	December 31, 2008

Following this initial term of maintenance, subject to the allocation of funds, the City may elect to purchase additional maintenance and, if applicable, subscription services for the Licensed Software, for two (2) additional twelve (12) month terms subject to the payment of the annual fees set out in Section IV of this Agreement.

- (b) Maintenance Services shall consist of: (i) reasonable amounts of telephone support to assist the City with the use of the Software; (ii) enhancement to the Software provided

to other users of the Licensed Software who have paid for maintenance services for the current maintenance term; (iii) master file subscription services; and (iv) the correction of errors or non-conformities with the Software in accordance with the support guidelines for such Licensed Software. The telephone support described herein shall be provided only to the individuals located at the Installation Site. If Contractor is unable to correct a reported error or non-conformity that is classified in the support guidelines as a production emergency or serious problem within thirty (30) days following notice from the City or an additional period of time reasonably agreed to by the parties, the City may terminate maintenance and subscription services for such Software. If the City terminates maintenance and subscription services in accordance with this Section, the City shall, as its sole and exclusive remedy, receive a pro-rata refund of the fees paid for maintenance and subscription services for the balance of the existing maintenance term.

- (c) Maintenance Services for the Licensed Software may be terminated by the City prior to the end of a term upon notice to Contractor. Contractor may terminate Maintenance Services for the Software upon at least thirty days written notice to the City prior to the end of any term or upon ninety days written notice to the City for any superseded versions of the Licensed software or if the Licensed Software are licensed for use on an operating system or computer that is no longer supported by their developer or manufacturer.
- (d) If the City terminates or declines to renew Maintenance Services for the Licensed Software and subsequently elects to renew Maintenance Services. The City shall pay to Contractor the applicable fees for the total period of non-maintenance and for the

subsequent twelve (12) month renewal term prior to obtaining maintenance services.

4. **CONFIDENTIALITY**

- (a) During the term of this Agreement, the City may have access to confidential information of Contractor. Confidential Information shall, subject to applicable law, include, without limitation: (I) Software, including enhancements thereto; (ii) documentation, technical support guidelines; (iii) customer and prospect lists, existing agreements with vendors and business partners; (iv) pricing proposals, financial and other business information, data and plans; (v) research and development information; (vi) formulas, methods, know-how, processes, designs, performance tests, product evaluations, computer software, bug fixes, reported problems with the Software; and (vii) any other information identified in writing as confidential or information that the receiving party knew or reasonably should have known was confidential.
- (b) Confidential Information shall be used solely for the City's performance under this Agreement and the exercise of its rights hereunder and shall not be disclosed to any third party. The City shall take reasonable precautions, at least as great as the precautions it takes to protect its own confidential information, to maintain the Confidential Information in strict confidence.
- (c) Confidential Information shall not include any information that the City can establish:
 - (i) is or subsequently becomes publicly available through no act or omission of the City; (ii) was in the City's lawful possession prior to disclosure of such information; (iii) is subsequently disclosed to the City by a third party who is not in breach of an obligation of confidentiality; or (iv) is independently developed by the City without the use or benefit of the Confidential Information. Confidential Information may be

disclosed under law, a court order or a valid subpoena to the extent counsel for the City determines in its reasonable discretion that the disclosure of such Confidential Information is reasonably required and promptly notifies the contractor in writing of such determination and provides the Contractor an opportunity to seek an appropriate protective order to disclosing such Confidential Information. In no event shall the Software be excluded from treatment as Confidential Information under this Section.

5. DELIVERY

Delivery of the Software shall be FOB point of origin. Contractor shall, however, be responsible for the payment of all shipping costs. Contractor may, upon notice to the City, deliver the Software electronically via the Internet or, to the extent available, permit the City to download the Software from Contractor's website.

6. WARRANTY

All terms set out in Subsection J, "Warranties" of Article III of City's Contract with Contractor shall apply to this License Agreement, and govern over any conflicting provision in this License Agreement. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN CITY'S CONTRACT WITH CONTRACTOR AND THIS AGREEMENT, THE SOFTWARE ARE PROVIDED "AS IS" AND CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND SERVICES FURNISHED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

7. LIMITATION OF LIABILITY

- 7.1 IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.2 IN NO EVENT SHALL CONTRACTOR'S LIABILITY TO CITY FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RESULTING FROM THIS AGREEMENT, OR FROM ITS PERFORMANCE OR BREACH, OR FROM THE LICENSED SOFTWARE OR ANY PART THEREFOR, OR FROM ANY SERVICE FURNISHED HEREUNDER, EXCEED 200% OF THE FEES PAID BY CITY UNDER THIS AGREEMENT.
- 7.3 THE LICENSED SOFTWARE MAY CONTAIN A DISABLING DEVICE: TO COMPLY WITH THE UNITED STATES POSTAL SERVICE ("USPS") CASS CERTIFICATION AND DPV REQUIREMENTS; TO PREVENT USE BEYOND THE TERM OF A LICENSE IDENTIFIED IN CITY'S CONTRACT WITH CONTRACTOR OR ON A COMPUTER OTHER THAN THE COMPUTER AUTHORIZED IN THIS AGREEMENT; AND/OR PREVENT USE IN EXCESS OF ANY VOLUME RESTRICTIONS OR BY MORE THAN THE NUMBER OF USERS SET OUT IN THIS AGREEMENT.

8. CONTRACTOR'S AUDIT RIGHTS

CONTRACTOR SHALL HAVE THE RIGHT, UPON REASONABLE NOTICE TO CITY, ONE TIME PER TWELVE MONTH PERIOD AND AT CONTRACTOR'S SOLE COST AND EXPENSE DURING REGULAR BUSINESS HOURS TO CONDUCT AN AUDIT OF CITY'S USE OF THE LICENSED SOFTWARE. ANY SUCH AUDIT SHALL CONSIST SOLELY OF A REVIEW OF CITY'S COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT, INCLUDING, IF NECESSARY, AN

EXAMINATION OF THE COMPUTER. CITY SHALL PROVIDE ALL REASONABLE ASSISTANCE TO CONTRACTOR DURING SUCH REVIEW.

9. **INDEMNITY**

All terms set out in Subsections D, E, F, G and H of Article III of City's Contract with Contractor shall apply to this License Agreement, and govern over any conflicting provision in this License Agreement.

10. **TERM AND TERMINATION**

All terms set out in Subsections A, B, C and D of Article V, "Term and Termination" of City's Contract with Contractor shall apply to this License Agreement, and govern over any conflicting provision in this License Agreement.

11. **GENERAL**

All terms set out in Subsections "A" through "S" of Article VI, "Miscellaneous" of City's Contract with Contractor shall apply to this License Agreement, and govern over any conflicting provision in this License Agreement.

EXHIBIT "A-2"

TRAINING DETAILS AND PRICING

1. In consultation with the Director, Contractor shall provide qualified instructors to train City personnel in the use of the Licensed Software at its facility as set out in the table below;
2. Contractor shall provide two types of training: End-User Training and System Consultant/Programmer Analyst training;
3. Contractor shall supply training aids such as laptops used in training, training manuals and software-based support modules;
4. Contractor's instructors shall include hands-on training using visual aids and manuals so that trainees are actually able to perform the tasks demonstrated by the instructors;
5. Contractor shall train System Consultants and Programmer Analysts of various skill levels in configuring the Licensed Software programs to meet the City's needs;
6. Contractor shall provide City End-Users such as the Assistant Director and Manager with an overview of the Licensed Software and lessons on how to create custom templates to suit their business needs; and
7. Contractor's instructors shall use City end-user Department files and their applications in the training sessions to illustrate what is being taught.

Course Name	No. Of Students	Unit Cost	Total Cost	Course Days	Course	Student Classification
Code 1 Plus	2	\$ 1,000	\$ 2,000	2	Off-Site	System Consultant, Programmer Analyst IV
DOC 1 Series 5 Basic	2	\$ 2,250	\$ 4,500	3	Off-Site	System Consultant, Programmer Analyst III
DOC 1 Series 5 Advance	2	\$ 2,250	\$ 4,500	3	Off-Site	System Consultant, Programmer Analyst IV
DOC 1 Series 5 Message 1 Users	2	\$ 750	\$ 1,500	2	Off-Site	Assistant Director, Manager, System Consultant
DOC 1 Series 5 Message 1 Administration	2	\$ 1,500	\$ 3,000	1	Off-Site	System Consultant, Programmer Analyst IV
List Conversion Plus	8	\$ 2,000	\$ 2,000	1	On-Site	System Consultant, Programmer Analyst III, IV
Advance List Conversion Plus	8	\$ 2,000	\$ 2,000	1	On-Site	System Consultant, Programmer Analyst III, IV
MailStream Plus	2	\$ 750	\$ 1,500	1.5	Off-Site	System Consultant, Programmer Analyst IV
Advance MailStream Plus	2	\$ 500	\$ 1,000	1	Off-Site	System Consultant, Programmer Analyst IV
Merge/Purge Plus	8	\$ 2,000	\$ 2,000	1	On-Site	System Consultant, Programmer Analyst III, IV
Travel, Per Diem an Hotel (three trips)		\$ 1,500	\$ 4,500	3	On-Site	Group 1 Instructors
Total		\$15,000	\$ 24,000			

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and

work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "C"
DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "D"
DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

Initials From _____ to _____ the following test has occurred
(Start date) (End date)

	Random	Reasonable <u>Suspicion</u>	Post <u>Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____